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Supreme Court, U.S.
FILED

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BIG RIVER MINERALS CORPORATION, et al.,
Petitioners,

v.

MICHAEL H. HOLLAND, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the Coal Industry Retiree Health Benefit Act of 1992 can be construed in a manner that renders language redundant or superfluous, particularly where the language triggers the statute's applicability. Can individuals who retired with disability retirement pensions, that did not file pension applications on or before September 30, 1994, be eligible beneficiaries under Section 9711(b) and Section 9712(b) of the Coal Act.

Whether imposing retroactive liability under the Coal Act on related persons such as Pea Ridge Iron Ore Company ("Pea Ridge") and Oxide Services Corporation ("Oxide Services") is unconstitutional based on the standard set forth in Eastern Enterprises v. Apfel, 188 S. Ct. 2131 (1998).

PARTIES TO THE PROCEEDINGS

Petitioners, Big River Minerals Corp., Big River Coal Corp., Pea Ridge Iron Ore Company, Inc., Oxide Services Corp., Castle Rock Mining, Castle Rock Coal Corp., Long Branch Energy Corp., Pinnacle Rock Coal Corp., Panther Branch Coal Company d/b/a Long Branch Energy, Birchfield Mining, Inc., Davidson Mining, Inc. and M.A.E. - West, Inc., were defendants in the district court and appellants in the circuit court, respectively.

Respondents, Michael H. Holland, Marty D. Hudson, Elliot A. Segal, A. Frank Dunham, as Trustees of the United Mine Workers of America 1992 Benefit Plan, were plaintiffs in the district court and appellees in the circuit court. Additionally, Michael H. Holland, Michael O. McKown, Donald E. Pierce, Jr., Elliot A. Segal, as Trustees of the United Mine Workers of America 1993 Benefit Plan were third party defendants in the district court and appellees in the circuit court.

None of the Petitioners is publicly owned and none have a publicly owned parent or a non-wholly owned subsidiary.

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals of the Fourth Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a)[1] is reported at 181 F.3d 597 (4th Cir. 1999). The opinion of the district court on the judgment which is the subject matter of this petition is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 23, 1999. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PERTINENT PROVISIONS

The Fifth Amendment to the Constitution and pertinent provisions of the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. § 9701-9722.

STATEMENT OF THE CASE

This was a case of first impression for the United States Court of Appeals for the Fourth Circuit. The question in the case was whether certain individuals who retired with disability retirement pensions (and their dependents) were

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[1] All citations to "App." herein are to the Appendix to this petition.

eligible for health benefits under the Coal Act. The dispute is not over whether these individuals are eligible for health benefits. They are. Instead, the dispute is whether their eligibility arises under the Coal Act, in which case the signatory companies (Birchfield Mining, Inc., Davidson Mining, Inc. and M.A.E. - West, Inc.) must pay for them, or under the 1993 Benefit Plan, in which case the signatory companies would not pay for them because they have no obligation to contribute to that plan.

The 1992 Benefit Plan was created by the Coal Act, which "closed out" two prior benefit plans maintained by the Bituminous Coal Operators' Association, Inc. ("BCOA") and the United Mine Workers of America ("UMWA"). The Coal Act was designed to remedy defects and pass benefit coverage; it did not address supervision of benefits to those who retire after September 30, 1994, or who meet age and service requirements after February 1, 1993. The group of coal industry employees covered by the 1992 Benefit Plan is finite and limited.

None of the individuals in question here was eligible for an age and service pension from the 1974 pension plan as of February 1, 1993, and none was receiving benefits under an employer's independent employer plan by February 1, 1993. Moreover, none of the individuals in question filed a pension application until after September 30, 1994. The district court focused on the retroactive date determined by the Social Security Administration ("SSA") to find eligibility for health benefits under the Coal Act.

This petition seeks to close out the Coal Act, not expand it as sought by the 1992 Benefit Plan.

The Coal Act finds related persons responsible for the liabilities of the signatory companies if the signatory companies are not able to satisfy the obligation. In this case, Pea Ridge and Oxide Services offer circumstances materially different from the signatory companies but much like the entities in Eastern Enterprises.

REASONS FOR GRANTING THE WRIT

The Fourth Circuit decision conflicts with the Fourth Circuit and Supreme Court decisions holding that a statute cannot be construed in a manner that renders language redundant or superfluous. The decision conflicts with controlling Supreme Court and Fourth Circuit decisions including United States v. Alaska, 521 U.S. 1, 59 (1997), Gustafson v. Alloyd Co., 513 U.S. 561, 574 (1995), Freytag v. Commissioner of Internal Revenue, 501 U.S. 868, 877 (1991), Alexander S. v. Harpootlian, 113 F.3d 1373, 1383 (4th Cir. 1997), cert. denied 118 S. Ct. 880, ___ U.S. ___ (1998), Maryland Psychiatric Society, Inc. v. Wasserman, 102 F.3d 717, 720 (4th Cir. 1996), cert. denied, 118 S. Ct. 51, ___ U.S. ___ (1997), United States v. Fisher, 58 F.3d 96, 99 (4th Cir. 1995), United States v. Morison, 844 F.2d 1057, 1064 (4th Cir. 1988), and State Water Control Board v. Train, 559 F.2d 921, 924 & n. 20 (4th Cir. 1976).

The Fourth Circuit initially found that Sections 9711(b)(1) and 9712(b)(2) of the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9711(b)(1) and 9712(b)(2) (App. 26a-28a), were ambiguous because they were reasonably susceptible to either party's interpretation. Citing to the Coal Act's background, the Fourth Circuit went on to adopt the Trustees' interpretation of those provisions. Holland v. Big River Minerals Corporation, 181 F.3d 597,

603 (4th Cir. 1999) (App. 12a). But the decision conflicts with the foregoing Supreme Court and Fourth Circuit decisions because it renders the "age and service" and "based upon" language in Sections 9711(b)(1) and 9712 (b)(2) redundant and superfluous.

ARGUMENT

A. A statute cannot be construed in a manner that makes certain language redundant or superfluous.

"Rules of statutory construction forbid us to construe one provision [of a statute] in a way that renders another provision of the same enactment superfluous." Maryland Psychiatric Society, 102 F.3d at 720, citing Freytag, 501 U.S. at 877. Therefore, "[w]hen interpreting a statute, rules of statutory construction require that we give meaning to all statutory provisions and seek an interpretation that permits us to read them with consistency," Fisher, 58 F.3d at 99.

These principles apply even if the statute is ambiguous: "[h]aving determined that the phrase at issue is ambiguous, we apply the traditional tools of statutory construction. [Citation omitted.] In doing so, '[w]e begin with the premise that all parts of the statute must be read together, neither taking specific words out of context, nor interpreting one part so as to render another meaningless.'" Alexander S., 113 F.3d at 1383.

In short, "[t]he Court will avoid an interpretation of a statute that 'renders some words altogether redundant.'" United States v. Alaska, 521 U.S. at 59, citing Gustafson, 513 U.S. at 574.

B. The Fourth Circuit overlooked these controlling principles of statutory construction.

This case initially turns on what the "age and service" and "based upon" language in Sections 9711(b)(1) and 9712(b)(2) mean for certain post-enactment disability pensioners who are seeking health benefits under the Coal Act.[2] Section 9711(b)(1) (App. 25a) provides as follows:

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[2] There is no dispute that disability pensioners who were already receiving health benefits from their employer or the UMWA 1950 or 1974 Benefit Plans as of February 1, 1993, are eligible for health benefits under Sections 9711(a) or 9712(b)(2). The dispute in this case is whether certain individuals who were not receiving benefits as of February 1, 1993, and who became disability pensioners after February 1, 1993, are eligible for health benefits under Sections 9711(b)(1) and 9712(b)(2). Big River submits that such post-enactment disability pensioners are not eligible for the statutory benefits and, instead, should be receiving benefits from a collectively bargained plan known as the United Mine Workers of America 1993 Benefit Plan. The United States District Court for the District of Columbia, in Penn Allegh Coal Co. v. Holland, et al., C.A. 97-121 (HHK) (July 22, 1998) supports Big River's position and is inapposite the district court and Fourth Circuit in this case. On appeal, the United States Court of Appeals for the District of Columbia Circuit reversed the district court's decision and concluded, in accordance with the Fourth Circuit, that "to qualify for benefits under Section 9711(b), a disability retiree need only satisfy whatever requirements entitle him to receive a pension by February 1, 1993, provided he has retired from the coal industry on or before September 30, 1994." Penn Allegh Coal Co. v. Holland, et al., 183 F.3d 860, 864 (D.C. Cir. 1999). The D.C. Circuit expressed no opinion regarding the age and service requirements of Section 9712(b). Id. The case was reversed and remanded to the district court for consideration of whether the subject employee retired from the coal industry by September 30, 1994. Id. at 865.

> The last signatory operator of any individual who, as of February 1, 1993, is not receiving retiree health benefits under the individual employer plan maintained by the last signatory operator pursuant to a 1978 or subsequent coal wage agreement, but has met the age and service requirements for eligibility to receive benefits under such plan as of such date, shall, at such time as such individual becomes eligible to receive benefits under such plan, provide health benefits coverage to such individual and the individual's eligible beneficiaries which is described in paragraph (2). This paragraph shall not apply to any individual who retired from the coal industry after September 30, 1994, or any eligible beneficiary of such individual. (Emphasis added.)

Section 9712(b)(2) (App. 27a-28a) provides as follows:

> For purposes of this section, the term "eligible beneficiary" means an individual who –
>
> (A) but for the enactment of this chapter would be eligible to receive benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, based upon age and service earned as of February 1, 1993; or
>
> (B) with respect to whom coverage is required to be provided under Section 9711, but who does not receive such coverage from the applicable last signatory operator or any

> related person, and any individual who is eligible for benefits by reason of a relationship to an individual described in subparagraph (A) or (B). In no event shall the 1992 UMWA Benefit Plan provide health benefits coverage to any eligible beneficiary who is a coal industry retiree who retired from the coal industry after September 30, 1994, or any beneficiary of such individual. (Emphasis added.)

To be an eligible beneficiary under Section 9711(b)(1) or 9712(b)(2), a post-enactment pensioner must, as of February 1, 1993, have "met the age and service requirements for eligibility" to receive health care from his former employer's individual employer plan, or be entitled to health benefits "based upon age and service earned as of February 1, 1993." The question here is whether a post-enactment disability pensioner can meet these criteria.

Big River submits that the "age and service" and "based upon" language necessarily render eligible only post-enactment age and service pensioners whose pensions and corresponding rights to health benefits under the prior collectively bargained plans was based on having attained a certain age and accumulated a certain amount of service. The Trustees, in contrast, claim that "[t]he reference to age and service requirements does not disqualify disabled retirees ... because retirees who were disabled prior to February 1, 1993 met all age and service requirements that applied to them, i.e., none." Big River Minerals Corp., 181 F.3d at 603 (App. 12a).

The decision concluded that "the statutory language is reasonably susceptible to either of these two interpretations." Id. The Fourth Circuit went on to adopt the Trustees' interpretation because, in its view, the Coal Act's historical background indicated that Congress intended to provide coal industry retirees with lifetime benefits, regardless of whether their retirement was due to disability or having satisfied age and service criteria. Big River Minerals Corp., 181 F.3d at 604 (App. 13a).

The Fourth Circuit effectively interprets Sections 9711(b)(1) and 9712(b)(2) as making eligible any pensioner who would have been eligible under the prior collectively bargained plans on any basis (age and service or disability) as of February 1, 1993. This interpretation, however, necessarily deprives the "age and service" and "based upon" language of any substantive meaning or purpose.

First, the Fourth Circuit's interpretation of Sections 9711(b)(1) and 9712(b)(2) may be achieved simply by deleting the "age and service" language:

> The last signatory operator of any individual who, as of February 1, 1993, is not receiving retiree health benefits under the individual employer plan maintained by the last signatory operator pursuant to a 1978 or subsequent coal wage agreement, but has met the ~~age and service~~ requirements for eligibility to receive benefits under such plan as of such date, shall, at such time as such individual becomes eligible to receive benefits under such plan, provide health benefits coverage to such individual ....

***

For purposes of this Section, the term "eligible beneficiary" means an individual who –

(A) but for the enactment of this chapter would be eligible to receive benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, ~~based upon age and service earned~~ as of February 1, 1993 ....

Since the Fourth Circuit's interpretation can be achieved by deleting the "age and service" and the "based upon" language, it necessarily follows that their interpretation renders that language redundant and superfluous.

Second, the Fourth Circuit's interpretation cannot sensibly co-exist with the "based upon" language in Section 9712(b)(2). Section 9712(b)(2) states that eligibility shall be "based upon age and service earned as of February 1, 1993." (Emphasis added.) If, as the Fourth Circuit found, this section renders post-enactment disability pensioners eligible beneficiaries, then Congress must have intended to define eligibility "based upon" on criteria (age and service) that do not even apply to and cannot be "earned" by a class it intended to encompass. Obviously, it makes no sense for Congress to have defined eligibility in this manner. Therefore, the "based upon" language must be considered redundant or superfluous to reach the Fourth Circuit's conclusion that Section 9712(b)(2) renders post-enactment disability pensioners eligible beneficiaries.

In short, the conclusion that post-enactment disability pensioners met the "age and service" and "based upon" requirements of Sections 9711(b)(1) and 9712(b)(2) because they met whatever age and service requirements were applicable to their pensions – none – is nothing more than a convoluted way of saying that those Sections should be read as if the "age and service" and "based upon" language was not there, and that all post-enactment pensioners who would have been eligible under the prior collectively bargained plans on any basis (age and service or disability) as of February 1, 1993, are eligible for benefits under the Coal Act. This interpretation of Sections 9711(b)(1) and 9712(b)(2), however, necessarily violates the rule against rendering statutory language redundant or superfluous.

As the Supreme Court observed in Gustafson, "Congress did not write the statute that way, however, and we decline to say it included [those terms] for no purpose." 513 U.S. at 574. Indeed, the rule against rendering statutory language redundant or superfluous has particular significance here, where the Fourth Circuit's interpretation has the "effect of blue penciling out express conditional language in the statute." Natural Resources Defense Council, 822 F.2d 104, 113 (D.C. Cir. 1987).

Put simply, the Fourth Circuit should not have adopted the Trustees' interpretation of Sections 9711(b)(1) and 9712(b)(2) because doing so violated the well-settled rule against rendering statutory language redundant or superfluous.

C. The Coal Act's purposes cannot override the rule against rendering statutory language redundant or superfluous, particularly under the facts of this case.

Given that Big River's interpretation was consistent with the plain meaning of the "age and service" and "based upon" language and did not violate any controlling rules of statutory construction, the Fourth Circuit should not have considered the Coal Act's background or purpose, much less used that analysis to adopt the Trustees' interpretation. " 'If the terms of [a] statute are unambiguous on their face, or in light of ordinary principles of statutory interpretation, then "judicial inquiry is complete," [citation omitted] ... [and] there is no need to consult legislative history...'" United States v. Morison, 844 F.2d at 1063-64 (Emphasis added); see also, Alexander S., 113 F.3d at 1383 ("[W]e begin with the premise that all parts of the statute must be read together [and cannot interpret] one part so as to render another meaningless.")

Even if a statute's background or alleged purpose could be used to override the principle that statutory language may not be rendered redundant or superfluous, there is no such background evidence of Congress' intent on the specific issue presented here. The fact that, as the Fourth Circuit observed, Congress intended to provide current coal industry pensioners with the lifetime health benefits, does not address, much less resolve, the narrow question of whether the same intent extended to post-enactment pensioners.

Moreover, there is good reason to conclude that Congress only intended to protect certain post-enactment pensioners – age and service pensioners – who, like the current pensioners it was protecting, could have begun receiving the statutorily authorized benefits on February 1, 1993.

First, the language of Sections 9711 and 9712 show that Congress narrowly limited the class of post-enactment pensioners it was protecting. For example, Sections 9711(b)(1) and 9712(b)(2) both limit eligibility to individuals who met certain requirements as of February 1, 1993, and exclude individuals who retired after September 30, 1994. Additionally, Section 9711(e) acknowledges that benefits for some post-enactment pensioners will have to be determined through collective bargaining. Therefore, the Fourth Circuit's basic premise - that Congress intended to make eligible everyone who could have been covered by the prior collectively bargained plans - is not supportable. See also Holland v. Double G Coal Co., Inc., 898 F.Supp. 351, 354 (S.D.W.Va. 1995) (the Coal Act was designed to remedy defects in past benefit coverage, and not to provide for an ever-expanding group of future beneficiaries).

Second, Congress' use of the "age and service" language evidences an intent to restrict the class of post-enactment pensioners even further. Put simply, Congress had no reason to use the "age and service" language - which has no meaning for disability pensioners - except to make clear that eligibility was limited to those who met the criteria for age and service pensions.

Indeed, Congress broadly included all current pensioners in Section 9711(a). Therefore, the omission of such broad language in Section 9711(b)(1), coupled with the "age and service" language, plainly indicates an intent to narrow eligibility to age and service pensioners. Brown v. Gardner, 513 U.S. 115, 120 (1994) ("Where Congress includes particular language in one Section, but omits it in another Section of the Act, it is generally presumed that Congress acted intentionally and purposefully in its disparate

inclusion or exclusion.").

Third, there are good reasons why Congress would limit the class of post-enactment pensioners who were being protected to age and service pensioners who could have retired on or before February 1, 1993. Such a construction would make eligibility under Section 9711(b)(1) co-extensive with that provided under Section 9711(a), because it would make eligible everyone who was receiving benefits as of February 1, 1993 (the Section 9711(a) group), as well as everyone who was not receiving benefits, but could have been receiving benefits by that same date, i.e., who had already met all of the requirements for eligibility, but simply had not yet chosen to retire and lock-in those benefits (the Section 9711(b)(1) group).[3]

The effect of Section 9711(a)(1) is, then, to provide miners who could have retired and begun receiving benefits by February 1, 1993, because they had already satisfied the age and service requirements for a UMWA pension by that date, up to twenty months, through September 30, 1994, before requiring them to choose whether to retire and vest in coverage under the Coal Act or to continue working and look solely to the retiree benefit package in the successor 1993 National Bituminous Coal Wage Agreement ("NBCWA") for their health care benefits after retirement. Significantly, the Section 9711(b)(1) window period did not expand the limited group of miners who could have qualified for benefits under Section 9711(a), and that latter group was expressly addressed

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[3] Post-enactment disability pensioners are unlike the age and service pensioners in that they could not have retired and begun receiving benefits by February 1, 1993, as facts critical to their eligibility, such as a determination of disability by SSA, had not yet occurred.

in Section 9711(e), which provided that they would be handled by collective bargaining.

Under these circumstances, the Coal Act's historical background and general purpose simply are not probative on the narrow question presented here, and if anything, there is good reason to conclude that such information contradicts the Fourth Circuit's interpretation of Sections 9711(b)(1) and 9712(b)(2). Therefore, the Fourth Circuit should not have relied on such factors to construe Sections 9711(b)(1) and 9712(b)(2), much less to override the rule against rendering statutory language redundant or superfluous. State Water Control Board v. Train, 559 F.2d at 924 & n. 20 ("Legislative materials may be without probative value, or contradictory, or ambiguous ... and in such cases will not be permitted to control the customary meaning of words or overcome rules of syntax or construction found by experience to be workable.")[4]

D. Imposing retroactive liability under the Coal Act on related persons is unconstitutional.

When Pea Ridge and Oxide Services were acquired by the control group in 1990 and 1989, respectively, the signatory companies already had done or completed everything they would do with respect to signing or

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[4] Indeed, courts have not hesitated to read the Coal Act literally, rather than adopting interpretations based principally on its alleged purpose or legislative history. See Dixie Fuel Company v. Commissioner of Social Security, 171 F.3d 1052 (6th Cir. 1999); National Coal Association v. Chater, 81 F.3d 1077 (11th Cir. 1996); Fawn Mining Co. v. Hudson, 80 F.3d 519 (D.C. Cir. 1996).

negotiating wage agreements, and their already existing health plans did not include any perpetual funding obligations, much less any obligations at all that could be imposed on Pea Ridge or Oxide Services. Moreover, even if the signatory companies should have had some expectation that they could be held perpetually liable for retiree health benefits as a result of having employed miners and signed labor agreements, the fact remains that Pea Ridge and Oxide Services did not do either of those things.

Moreover, even if imposing control group liability under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001, et seq. ("ERISA") and the Multiemployer Pension Plan Amendments Act ("MPPAA") should be upheld because it is a rational way of protecting benefits without creating future disincentives to establishing pension plans, it does not follow that imposing such liability under the Coal Act is equally rational. Unlike the liability imposed under ERISA and MPPAA, the liability imposed here is purely retroactive. As shown by Eastern Enterprises, purely retroactive liability must be justified by something more than a desire to guarantee the payment of benefits, such as having participated in creating an expectation of benefits or having caused harm to the prior UMWA Benefit Plans. No such facts are present here.

E. Conclusion

The Fourth Circuit's interpretation of Sections 9711(b)(1) and 9712(b)(2) necessarily renders redundant and superfluous critical parts of the very language which defines eligibility. For these reasons, this petition should be granted.

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

(Decided June 23, 1999)

No. 98-2353

MICHAEL H. HOLLAND;	)
MARTY D. HUDSON;	)
ELLIOT A. SEGAL; A. FRANK	)
DUNHAM, as Trustees of the	)
UNITED MINE WORKERS OF	)
AMERICA 1992 BENEFIT PLAN,	)
Plaintiffs-Appellees,	)
	)
v.	)
	)
BIG RIVER MINERALS	)
CORPORATION; BIG RIVER	)
COAL CORPORATION; PEA	)
RIDGE IRON ORE COMPANY,	)
INCORPORATED; OXIDE	)
SERVICES CORPORATION;	)
CASTLE ROCK MINING	)
COMPANY; CASTLE ROCK	)
COAL CORPORATION;	)
LONG BRANCH ENERGY	)
CORPORATION; PINNACLE	)
ROCK COAL CORPORATION;	)
PANTHER BRANCH COAL	)

COMPANY, d/b/a Long Branch Energy; BIRCHFIELD MINING, INCORPORATED; DAVIDSON MINING, INCORPORATED; M.A.E.-WEST, INCORPORATED,
Defendants-Appellants,

v.

MICHAEL H. HOLLAND; MICHAEL O. MCKOWN; DONALD E. PIERCE, JR.; ELLIOT A. SEGAL, Trustees of the United Mine Workers of America 1993 Benefit Plan,
Third Party Defendants-Appellees.

OPINION

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. Dennis Raymond Knapp, Senior District Judge.
(CA-97-138-2)

Before WIDENER, MURNAGHAN, and WILKINS, Circuit Judges.

Affirmed in part and reversed in part by published opinion. Judge Wilkins wrote the opinion, in which Judge Widener and Judge Murnaghan joined.

COUNSEL

ARGUED: Charles Leslie Woody, SPILMAN, THOMAS & BATTLE, P.L.L.C., Charleston, West Virginia; David J. Laurent, POLITO & SMOCK, P.C., Pittsburgh, Pennsylvania, for Appellants. Marilyn Louise Baker, MOONEY, GREEN, BAKER, GIBSON & SAINDON, P.C., Washington, D.C., for Appellees.

ON BRIEF: Elizabeth A. Saindon, Joseph R. House, MOONEY, GREEN, BAKER, GIBSON & SAINDON, P.C., Washington, D.C.; Peter Buscemi, MORGAN, LEWIS & BOCKIUS, L.L.P., Washington, D.C.; David W. Allen, Brian H. Benjet, Office of the General Counsel, UMWA HEALTH AND RETIREMENT FUNDS, Washington, D.C., for Appellees.

WILKINS, Circuit Judge:

OPINION

The Trustees of the United Mine Workers of America 1992 Benefit Plan (the "Trustees") brought this action against Coal Companies[1] under the Coal Industry Retiree Health

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[1] We refer to Defendants collectively as "Coal Companies." There are two groups of Coal Companies involved as defendants. The first group--Birchfield Mining, Inc., Davidson Mining, Inc., and M.A.E.-West, Inc.--were signatories to collective bargaining agreements providing health benefits for the retired miners at issue. The remaining Coal Companies-- Big River Minerals Corporation, Big River Coal Corporation, Pea Ridge Iron Ore Company, Inc., Oxide Services Corporation, Castle Rock Mining Company, Castle Rock Coal Corporation, Long

Benefit Act of 1992 (the Coal Act), see 26 U.S.C.A. §§ 9701-22 (West Supp. 1999), claiming that they were liable for the health benefits of 11 former miners who retired due to disabilities as well as the health benefits of their dependents. The district court granted summary judgment in favor of the Trustees. The court subsequently entered a judgment directing Coal Companies to fund the health benefits in the future and to reimburse the Trustees for health benefits previously provided by the 1992 UMWA Benefit Plan, awarding attorney's fees to the Trustees, and imposing an increased prefunding requirement on Coal Companies. Thereafter, the district court denied a motion by Defendants Pea Ridge Iron Ore Company, Inc. (Pea Ridge) and Oxide Services Corporation (Oxide) for reconsideration, see Fed. R. Civ. P. 59, which relied on Eastern Enterprises v. Apfel, 524 U.S. 498, 118 S. Ct. 2131, 141 L.Ed.2d 451 (1998), to argue that 26 U.S.C.A. § 9712(d)(4) of the Coal Act was unconstitutional under the Fifth Amendment as applied to them. Because we conclude that the district court correctly determined that the disabled retirees are eligible beneficiaries under the Coal Act, that Pea Ridge and Oxide waived their constitutional challenge to the Coal Act, and that the award of attorney's fees was appropriate, we affirm the rulings of the district court on these issues. However, we hold that the district court erred in imposing the increased prefunding

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Branch Energy Corporation, Pinnacle Rock Coal Corporation, and Panther Branch Coal Company--are related to the signatory companies and thus are jointly and severally liable for any amounts required to be paid by the signatory company under the Coal Act. See 26 U.S.C.A.§ 9712(d)(4) (West Supp. 1999).

requirement. We therefore vacate that portion of the judgment.

I.

The issue of health care benefits for retired coal industry workers and their dependents has a protracted history. See generally Eastern Enters., 118 S. Ct. at 2137-42 (plurality opinion) (discussing history leading to the enactment of the Coal Act); id. at 2165-66 (Breyer, J., dissenting) (same); Holland v. Keenan Trucking Co., 102 F.3d 736, 738-39 (4th Cir. 1996) (same). Disputes concerning health care for miners date back to the time early in this century when such care was funded with a prepayment plan through payroll deductions and was supplied by company doctors. In the 1930s and 1940s the United Mine Workers of America (UMWA) and coal industry employers sought changes in the method of providing essential services to miners, and from the late 1940s through the early 1970s pension and medical benefits were provided by several UMWA funds created under a series of National Bituminous Coal Wage Agreements (NBCWAs), including a 1950 and a 1974 UMWA Benefit Plan. The funding for these benefits was supplied in part by a royalty on each ton of coal mined and by payroll deductions. As benefits improved under UMWA plans and the number of beneficiaries increased, other factors such as a decrease in the amount of coal produced and a rapid increase in health care costs conspired to produce financial problems for the funds. In response to these financial pressures, the 1978 NBCWA allocated to signatory employers responsibility for the health care costs of their active and retired miners. The 1974 UMWA Benefit Plan remained in place, but was responsible for providing benefits only to "orphaned" retired miners--those whose former employers were no longer in

business. Additionally, signatory operators under the 1978 NBCWA became liable for defined benefits to miners rather than merely for specified contributions of royalties.

Despite this restructuring, the benefit plans continued to suffer financially, and by the late 1980s they were facing insolvency. Unrest concerning this situation led to an 11-month strike beginning in 1989 by mine workers against the Pittston Coal Company, which ended only after the Secretary of Labor intervened and negotiated a settlement. Thereafter, the Secretary established the Advisory Commission on United Mine Workers of America Retiree Health Benefits (the "Coal Commission"), a bipartisan commission formed to assess the financial outlook of the UMWA health benefit plans and to devise possible plans to guarantee their long-term viability. The Coal Commission concluded that retired miners were entitled to the health benefits that had been promised them and that such commitments must be honored; that a statutory obligation to fund the benefits should be imposed on current and former signatories to NBCWAs; and that some means of funding benefits for orphaned miners must be developed. After conducting hearings on the Coal Commission's recommendations, Congress enacted the Coal Act. Congress found:

> [I]n order to secure the stability of interstate commerce, it is necessary to modify the current private health care benefit plan structure for retirees in the coal industry to identify persons most responsible for plan liabilities in order to stabilize plan funding and

> allow for the provision of health care benefits to such retirees.

26 U.S.C.A. § 9701 note.

Toward these goals, the Coal Act legislated three significant changes in health benefits for retired coal workers. First, it consolidated the 1950 and 1974 UMWA Benefit Plans into the United Mine Workers of America Combined Benefit Fund (the "Combined Fund"). See 26 U.S.C.A. § 9702(a)(2). The Combined Fund provides health and death benefits to coal industry retirees who, as of July 20, 1992, were eligible to receive and were receiving benefits from the 1950 or 1974 UMWA Benefit Plans and to those receiving or eligible to receive such benefits as of such date by virtue of a relationship to such a retiree. See 26 U.S.C.A. § 9703. Second, the Coal Act mandated the continuance of individual employer plans maintained by signatories to the 1978 (and subsequent) NBCWAs; these plans provide health coverage for retirees who were receiving or were eligible to receive retiree benefits as of February 1, 1993 and retired on or before September 30, 1994 and their survivors and dependents. See 26 U.S.C.A. § 9711(a)-(b). Third, the Coal Act established the 1992 UMWA Benefit Plan to provide health benefits to retirees who were eligible for but not receiving benefits under the 1950 or 1974 UMWA Benefit Plans and to retirees who, although eligible for coverage under § 9711(b), are not receiving benefits from an individual employer plan. See 26 U.S.C.A. § 9712. Benefits paid by the 1992 UMWA Benefit Plan are funded through premiums paid by the "1988 last signatory operators." Id. § 9712(d)(1). The term "1988 last signatory operator," generally speaking, refers to a coal operator who signed the 1988 NBCWA and

was the most recent coal industry employer of a coal industry retiree. 26 U.S.C.A.§§ 9701(c)(1), (3), (4), 9712(d)(6). Each affected coal operator is required to pay annual and monthly premiums to the 1992 UMWA Benefit Plan and to provide security for the projected cost of covering eligible beneficiaries. See 26 U.S.C.A. § 9712(d)(1).

In order to ensure that coal operators would not be able to avoid their obligations to the 1992 UMWA Benefit Plan, Congress provided that "any related person" to an operator obligated to make payments to the 1992 UMWA Benefit Plan would be jointly and severally liable for those obligations. 26 U.S.C.A. § 9712(d)(4). The term "related person" is defined broadly to include a coal operator's individual partners and corporate affiliates and other trades or businesses controlled by a coal operator's principal shareholder or corporate parent. 26 U.S.C.A. § 9701(c)(2); see also 26 U.S.C.A. §§ 52, 1563(a) (West Supp. 1999).

Section 9712(b) establishes the coverage requirements for the 1992 UMWA Benefit Plan. It provides in pertinent part:

> Eligible beneficiary.--For purposes of this section, the term "eligible beneficiary" means an individual who–
>
> (A) but for the enactment of this chapter, would be eligible to receive benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, based upon age and service earned as of February 1, 1993; or
>
> (B) with respect to whom coverage is required to be provided under section 9711,

> but who does not receive such coverage from the applicable last signatory operator or any related person, and any individual who is eligible for benefits by reason of a relationship to an individual described in subparagraph (A) or (B). In no event shall the 1992 UMWA Benefit Plan provide health benefits coverage to any eligible beneficiary who is a coal industry retiree who retired from the coal industry after September 30, 1994, or any beneficiary of such individual.

26 U.S.C.A. § 9712(b)(2). Section 9711(b) in turn provides in pertinent part:

> The last signatory operator of any individual who, as of February 1, 1993, is not receiving retiree health benefits under the individual employer plan maintained by the last signatory operator pursuant to a 1978 or subsequent coal wage agreement, but has met the age and service requirements for eligibility to receive benefits under such plan as of such date, shall, at such time as such individual becomes eligible to receive benefits under such plan, provide health benefits coverage to such individual and the individual's eligible beneficiaries which is described in paragraph (2). This paragraph shall not apply to any individual who retired from the coal industry after September 30, 1994, or any eligible beneficiary of such individual.

26 U.S.C.A. § 9711(b)(1).

The Trustees brought this action claiming that Coal Companies are liable to fund health benefits under § 9711 or § 9712 for a group of 11 miners, who retired due to disabilities, and their dependents. Coal Companies, on the other hand, asserted that miners who have retired due to a disability are not individuals who have "met the age and service requirements for eligibility to receive" retirement benefits under an individual employer plan maintained by the last signatory operator of a 1978 or subsequent NBCWA, 26 U.S.C.A. § 9711(b)(1), and do not fit the definition of an "eligible beneficiary" because their eligibility to receive benefits from the 1950 or 1974 UMWA Benefit Plan is not "based upon age and service" requirements, 26 U.S.C.A. § 9712(b)(2). Alternatively, Coal Companies maintained that even assuming the 11 miners in question met the age and service requirements, they nevertheless were not entitled to benefits because they did not apply for retirement benefits prior to September 30, 1994 and thus had not retired by that date.

II.

A.

The first question presented is whether Coal Companies are liable under § 9711(b)(1) and § 9712(b)(2) for health benefits of coal workers who meet the eligibility requirements for benefits under individual employer plans created pursuant to 1978 or subsequent NBCWAs or the 1950 or 1974 UMWA Benefit Plans only by reason of their disability. Coal Companies contend that disability retirees are

not covered because they neither (1) qualify as individuals who are eligible to receive benefits under 1978 or subsequent NBCWA agreements because they "met the age and service requirements for eligibility to receive benefits under such plan," 26 U.S.C.A.§ 9711(b)(1), nor (2) satisfy the definition of "[e]ligible beneficiar[ies]" in that they did not become eligible for benefits "based upon age and service earned as of February 1, 1993," 26 U.S.C.A. § 9712(b)(2)(A).

Statutory interpretation necessarily begins with an analysis of the language of the statute. See Landreth Timber Co. v. Landreth, 471 U.S. 681, 685 (1985). And, in analyzing the meaning of a statute, we must first "determine whether the language at issue has a plain and unambiguous meaning." Robinson v. Shell Oil Co., 519 U.S. 337, 340, 117 S.Ct. 843, 136 L.Ed.2d 808 (1997). Our determination of whether a statute is ambiguous is guided "by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." Id. at 341, 117 S.Ct. 843. If the language is plain and "the statutory scheme is coherent and consistent," we need not inquire further. United States v. Ron Pair Enters., Inc., 489 U.S. 235, 240-41, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989). "[T]he sole function of the courts is to enforce [the statute] according to its terms." Caminetti v. United States, 242 U.S. 470, 485, 37 S.Ct. 192, 61 L.Ed. 442 (1917).[2] If the

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[2] Therefore, courts should venture beyond the plain meaning of the statute only in those rare instances in which there is "a clearly expressed legislative intent to the contrary," Russello v. United States, 464 U.S. 16, 20, 104 S.Ct. 296, 78 L.Ed.2d 17 (1983) (internal quotation marks omitted), in which a literal application of the statute would thwart its obvious purpose, see

statutory language is ambiguous, we "look beyond the language of the statute to the legislative history for guidance." Stiltner v.Beretta U.S.A. Corp., 74 F.3d 1473, 1482 (4th Cir. 1996) (en banc). If congressional intent is not apparent from an examination of "the legislative history, we apply the traditional tools of statutory construction." Id.

Coal Companies first maintain that disability retirees satisfy the requirements of neither § 9711(b)(1) nor § 9712(b)(2) because these statutes require eligibility for benefits to be based upon "age and service" earned rather than a disability. In support of this contention, Coal Companies argue that § 9711(b)(1) applies only to individuals who are eligible for benefits under an individual employer plan created by a 1978 or subsequent NBCWA when those individuals have "met the age and service requirements for eligibility." Further, Coal Companies assert that the statutory definition of an "eligible beneficiary" in § 9712(b)(2) requires that a retiree's eligibility to receive benefits from the 1950 or 1974 UMWA Benefit Plans be "based upon" his having satisfied age and service requirements. The Trustees, on the other hand, assert that Coal Companies' reading of the statutes is too strict. The Trustees contend that the references to age and service earned as of February 1, 1993 in § 9711(b)(1) and § 9712(b)(2) were meant to establish only the date after which retirees would not qualify for Coal Act benefits. The reference to age and service requirements does

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Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571, 102 S.Ct. 3245, 73 L.Ed.2d 973 (1982), or in which a literal application of the statute would produce an absurd result, see United States v.American Trucking Ass'ns, 310 U.S. 534, 543, 60 S.Ct. 1059, 84 L.Ed. 1345 (1940).

not disqualify disabled retirees, according to the Trustees, because retirees who were disabled prior to February 1, 1993 met all age and service requirements that applied to them, i.e., none.

In our view, the statutory language is reasonably susceptible to either of these two interpretations. See Robinson, 519 U.S. at 342, 117 S.Ct. 843 (holding statute is ambiguous where it "could just as easily be read to" have one meaning as another); Adler v. Commissioner, 86 F.3d 378, 380 (4th Cir. 1996) (holding statute ambiguous because it was reasonably susceptible to multiple meanings). And, having determined that these provisions are ambiguous, we look to the purpose of the Coal Act, as revealed in the legislative history, to resolve their meaning. See id. at 380-81 (explaining "that we best implement the intent of Congress by construing the statute in a way that gives effect to its purpose"); Andrews v. Riggs Nat'l Bank of Washington, D.C. (In re Andrews), 80 F.3d 906, 909 (4th Cir. 1996) (recognizing that if statutory language is ambiguous, this court will "give it the meaning most consistent with the statute's purpose"). The historical background leading to the enactment of the Coal Act makes clear that Congress intended to provide coal industry retirees with the lifetime benefits they had been promised. Since coal workers had been promised health benefits in the event of their retirement, whether that retirement resulted from a disability or was based solely on their satisfaction of age and service requirements, we conclude that Congress intended that coal industry workers who retired as a result of a disability would be eligible for benefits under § 9711(b)(1) and § 9712(b)(2). See Eastern Enters., 118 S. Ct. at 2140-42 (plurality opinion) (discussing

legislative history); id. at 2166 (Breyer, J., dissenting) (same).

B.

Coal Companies contend alternatively that even if disability retirees may be eligible for benefits under § 9711(b)(1) and § 9712(b)(2), those provisions limit benefits to coal workers who actually filed an application for pension benefits by September 30, 1994. See 26 U.S.C.A. § 9711(b)(1) ("This paragraph shall not apply to any individual who retired from the coal industry after September 30, 1994, or any eligible beneficiary of such an individual."); 26 U.S.C.A. § 9712(b)(2) ("In no event shall the 1992 UMWA Benefit Plan provide health benefits coverage to any eligible beneficiary who is a coal industry retiree who retired from the coal industry after September 30, 1994, or any beneficiary of such individual"). Since the 11 miners at issue here did not file an application for pension benefits before September 30, 1994, Coal Companies argue, the miners are not entitled to benefits. We disagree.

The plain meaning of the word "retired" is "withdrawn from or no longer occupied with one's business or profession." The Random House College Dictionary 1127 (rev. ed. 1980). The plain meaning of the word "retired," therefore, does not encompass only those individuals who receive, or have applied for, pension benefits. Thus, we reject Coal Companies' argument that only those individuals who filed applications for retirement benefits as of September 30, 1994 are eligible for coverage under § 9711(b)(1) and § 9712(b)(2).

C.

In sum, we find § 9711(b)(1) and § 9712(b)(2) to be ambiguous and construe them to have a meaning consistent with the purpose of the Coal Act--to provide lifetime health benefits for retiring miners who had been promised such benefits under the prior labor agreements. Therefore, we conclude that disabled retirees are included among the individuals covered under § 9711(b)(1) and § 9712(b)(2). In addition, we hold that not only those individuals who have filed applications for retirement benefits by September 30, 1994 are eligible for coverage under § 9711(b)(1) and § 9712(b)(2).

III.

Pea Ridge and Oxide, two "related" coal companies--i.e., ones that were not signatories to a prior agreement establishing a benefit plan but that are members of the control group of a signatory company- claim that holding them responsible for contributions to the 1992 UMWA Benefit Plan constitutes a violation of due process and a taking in violation of the Fifth Amendment because they never employed covered miners and were not within the control group when the miners were employed.

As a threshold matter, we must determine whether this issue is properly before the court. Generally, issues that were not raised in the district court will not be addressed on appeal. See Singleton v. Wulff, 428 U.S. 106, 120, 96 S.Ct. 2868, 49 L.Ed.2d 826 (1976); Muth v. United States, 1 F.3d 246, 250 (4th Cir. 1993) (explaining that issues not raised in district court will not be considered on appeal unless the "refusal to

consider the newly raised issue would be plain error or would result in a fundamental miscarriage of justice"); United States v. One 1971 Mercedes Benz 2-Door Coupe, 542 F.2d 912, 915 (4th Cir. 1976) (explaining that the failure to raise and preserve issue in district court waives consideration of that issue on appeal absent exceptional circumstances); see also United States v. Dickerson, 166 F.3d at 667, 683 (4th Cir. 1999) (recognizing that this court may address issue not raised below in exceptional circumstances). And, an issue presented for the first time in a motion pursuant to Federal Rule of Civil Procedure 59(e) generally is not timely raised; accordingly, such an issue is not preserved for appellate review unless the district court exercises its discretion to excuse the party's lack of timeliness and consider the issue. See Quest Med., Inc. v. Apprill, 90 F.3d 1080, 1087 (5th Cir. 1996) (noting that although courts generally look with disfavor on arguments presented for first time post-trial, district court possesses the discretion to entertain such arguments and if it excuses the default and addresses the merits, the issue is properly preserved for appellate review); see also Pittston Co. Ultramar Am. Ltd. v. Allianz Ins. Co., 124 F.3d 508, 519 n.12 (3d Cir. 1997) (declining to consider on appeal issue raised for first time in party's Rule 59(e) motion); Jorge Rivera Surillo & Co. v. Falconer Glass Indus., 37 F.3d 25, 29 (1st Cir. 1994) (dismissing arguments raised for first time in Rule 59(e) motion and not addressed on merits by district court as not properly before the appellate court); Havoco of Am., Ltd. v. Sumitomo Corp. of Am., 971 F.2d 1332, 1336 (7th Cir. 1992) (stating that arguments that could and should have been made prior to judgment may not be raised for first time in Rule 59(e) motion); cf. 389 Orange St. Partners v. Arnold, 170 F.3d 1200, 1207 (9th Cir. 1999) (explaining that a district court does not abuse its discretion in "declining to

address an issue raised for the first time in a motion for reconsideration"). But cf. Lawson v. Singletary, 85 F.3d 502, 507 (11th Cir. 1996) (per curiam) (concluding that district court abused its discretion in failing to consider issue raised for first time in Rule 59(e) motion).

Pea Ridge and Oxide recognize that they failed to raise their constitutional arguments until their Rule 59(e) motion for reconsideration following the final decision in district court. Nevertheless, they assert that their failure to pursue the issue timely does not constitute a waiver of the constitutional argument because they satisfy an exception to the general rule of waiver. Such an exception exists, they correctly explain, when there has been an intervening change in the law recognizing an issue that was not previously available. See Curtis Publ'g Co. v. Butts, 388 U.S. 130, 142-45, 87 S.Ct. 1975, 18 L.Ed.2d 1094 (1967) (plurality opinion); Holzsager v. Valley Hosp., 646 F.2d 792, 796 (2d Cir. 1981); see also Pacific Ins. Co. v. American Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998) (explaining that although a Rule 59(e) motion may be granted based on, inter alia, "an intervening change in controlling law," such "motions may not be used. . . to raise arguments which could have been raised prior to the issuance of the judgment. . . [or] to argue a case under a novel legal theory that the party had the ability to address in the first instance"), cert. denied, __ U.S. __, 119 S. Ct. 869, 142 L.Ed.2d 771 (1999). The intervening law exception to the general rule that the failure to raise an issue timely in the district court waives review of that issue on appeal applies when "there was strong precedent" prior to the change, Curtis Publ'g Co., 388 U.S. at 143, 87 S.Ct. 1975 (plurality opinion), such that the failure to raise the issue was not unreasonable and the opposing party was not prejudiced

by the failure to raise the issue sooner, id. at 145, 87 S.Ct. 1975. Pea Ridge and Oxide maintain that prior to the Supreme Court decision in Eastern Enterprises v. Apfel, 524 U.S. 498, 118 S.Ct. 2131, 141 L.Ed.2d 451 (1998), this court had rejected constitutional challenges to the Coal Act and that Eastern Enterprises changed the law, permitting them to raise the constitutional issue at this juncture. We disagree.

First, Eastern Enterprises cannot be viewed as effecting a change in the law of Fifth Amendment takings jurisprudence sufficient to excuse the failure to raise a takings challenge earlier. Eastern Enterprises, decided by a 4-1-4 vote, involved a challenge to the constitutionality of 26 U.S.C.A. § 9706, a provision of the Coal Act different from the one at issue here; that provision imposed retroactive liability for funding the Combined Fund on pre-1978 NBCWA signatories. Four Justices concluded that § 9706 effected an unconstitutional taking. See id. at 2146-53. The remaining five justices rejected the conclusion that an unconstitutional taking was effected, reasoning that the constitutionality of the financial burden on the company imposed by the Coal Act must be considered as a question of substantive due process rather than as a takings question because no identifiable property interest was infringed by the legislation. See id. at 2154-58 (Kennedy, J., concurring in the judgment and dissenting in part); id. at 2161-63 (Breyer, J., dissenting). Consequently, to the extent Eastern Enterprises worked any change with respect to takings jurisprudence, that change was not favorable to Pea Ridge and Oxide's position and therefore does not excuse their failure to raise their takings claim in a timely fashion.

Second, no strong precedent prevented Pea Ridge and Oxide from raising the due process issue earlier. In Holland, we rejected a due process challenge to the 1992 UMWA Benefit Plan, ruling that Congress did not act arbitrarily in concluding that signatories to NBCWAs promising lifetime health benefits should be required to fund those benefits. See Holland, 102 F.3d at 740-42. However, we did not address any separate argument related to liability of members of a control group of such signatories, and that issue remained an open question. Furthermore, Eastern Enterprises did not address whether the Coal Act violated the due process rights of members of a control group of signatories to NBCWAs promising lifetime health benefits for retired miners. Rather, Eastern Enterprises can only be viewed as rendering a decision that Congress acted arbitrarily in imposing retroactive liability on a signatory to NBCWAs in existence prior to those that promised lifetime health benefits to retired miners when that signatory made no promise of lifetime benefits, did not contribute to the problem that caused the funding shortfall for the promised lifetime benefits or to the need for such benefits, and was not put on notice by any governmental action during the relevant time period that it might be subjected to later liability. See Eastern Enters., 118 S. Ct. at 2151-53 (plurality opinion); id. at 2159-60 (Kennedy, J., concurring in the judgment and dissenting in part). The position of members of a control group upon whom liability is imposed only by virtue of that association is different from that of the NBCWA signatory in Eastern Enterprises. And, the considerations bearing upon whether Congress acted rationally in imposing retroactive liability on the NBCWA signatory in Eastern Enterprises are different than those relating to the rationality of imposing liability on members of a control group of a 1978 or subsequent benefit

plan signatory, although admittedly some of the same arguments can be made with respect to both issues.

Thus, we conclude that Eastern Enterprises did not constitute a change in the law permitting Pea Ridge and Oxide to raise their constitutional arguments for the first time in a Rule 59(e) motion. As such, those constitutional issues are not properly preserved for our review.[3]

IV.

The only remaining question is whether the district court erred in imposing an "additional prefunding premium" on Coal Companies as a result of its finding that they were liable for the benefits of the disabled miners and their dependents as claimed by Trustees. In the section of the Coal Act dealing with the guarantee of benefits, Congress directed that the contribution requirement for the plan include:

> the provision of security (in the form of a bond, letter of credit or cash escrow) in an amount equal to a portion of the projected future cost to the 1992 UMWA Benefit Plan of providing health benefits for eligible and potentially eligible beneficiaries attributable to the 1988 last signatory operator. If a 1988 last

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[3] Although the district court ruled that the constitutional claims raised by Pea Ridge and Oxide in their Rule 59(e) motion lacked merit, it did so only as an alternative holding to its principal conclusion that the constitutional issues were not properly before the court because they were not timely raised. The district court, therefore, did not excuse the default.

> signatory operator is unable to provide the security required, the 1992 UMWA Benefit Plan shall require the operator to pay an annual prefunding premium that is greater than the premium otherwise applicable.

26 U.S.C.A. § 9712(d)(1)(C) (emphasis added). The 1992 UMWA Benefit Plan formed by the Trustees established an additional prefunding premium of at least five times the annual funding premium. And, the district court imposed an additional prefunding premium of ten times the annual funding premium on the coal companies here. The language of the statute states that the prefunding provision is to be applied when a company is "unable" to provide the security. Id. The provision does not speak to the situation, like the one at issue here, when absent any showing that a company was unable to post the security, it declined to do so because it did not believe that it was liable. The plain language of the provision, therefore, demonstrates that an increased funding obligation is not applicable in the present situation.

V.

Congress intended through the Coal Act to ensure promised lifetime health benefits to coal industry retirees; therefore, we construe § 9711(b)(1) and § 9712(b)(2) to cover disabled retirees who retired before September 30, 1994 and their beneficiaries and affirm the judgment of the district court imposing liability and awarding attorney's fees.[4] The

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[4] Coal Companies' only challenge to the award of attorney's fees rested on their argument that the district court

additional prefunding premium imposed by the district court, however, was erroneous because there was no showing that the companies were "unable" to provide the appropriate security--only that they did not provide it. Thus, we affirm in part and reverse in part.

AFFIRMED IN PART; REVERSED IN PART

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incorrectly decided that disabled retirees were included as eligible beneficiaries. Having concluded that the district court did not err in this regard, we affirm the award of attorney's fees.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

(Filed July 23, 1999)

No. 98-2353

MICHAEL H. HOLLAND; MARTY D. HUDSON; ELLIOT A. SEGAL; A. FRANK DUNHAM, as Trustees of the UNITED MINE WORKERS OF AMERICA 1992 BENEFIT PLAN	)
Plaintiffs-Appellees,	)
v.	)
BIG RIVER MINERALS CORPORATION; BIG RIVER COAL CORPORATION; PEA RIDGE IRON ORE COMPANY, INCORPORATED; OXIDE SERVICES CORPORATION; CASTLE ROCK MINING COMPANY; CASTLE ROCK	)

COAL CORPORATION; LONG BRANCH ENERGY CORPORATION; PINNACLE ROCK COAL CORPORATION; PANTHER BRANCH COAL COMPANY, d/b/a Long Branch Energy; BIRCHFIELD MINING, INCORPORATED; DAVIDSON MINING, INCORPORATED; M.A.E.-WEST, INCORPORATED, *Defendants-Appellants*,	)
v.	)
MICHAEL H. HOLLAND; MICHAEL O. MCKOWN; DONALD E. PIERCE, JR.; ELLIOT A. SEGAL, Trustees of the United Mine Workers of America 1993 Benefit Plan, *Third Party Defendants-Appellees*.	)

On Petition for Rehearing and Rehearing En Banc

The appellants' petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied;

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

For the Court,
/s/ _____
Patricia S. Connor, Clerk

APPENDIX C

INTERNAL REVENUE CODE

26 § 9711

26 U.S.C. § 9711(b)

(b) Coverage of eligible recipients.

(1) **In general**. - The last signatory operator of any individual who, as of February 1, 1993, is not receiving retiree health benefits under the individual employer plan maintained by the last signatory operator pursuant to a 1978 or subsequent coal wage agreement, but has met the age and service requirements for eligibility to receive benefits under such plan as of such date, shall, at such times as such individual becomes eligible to receive benefits under such plan, provide health benefits coverage to such individual and the individual's eligible beneficiaries which is described in paragraph (2). This paragraph shall not apply to any individual who retired from the coal industry after September 30, 1994, or any eligible beneficiary of such individual.

(2) **Coverage**. - Subject to the provisions of subsection (d), health benefits coverage is described in this paragraph if it is substantially the same as (and subject to all the limitations of) the coverage provided by the individual employer plan as of January 1, 1992. Such coverage shall continue for as long as the last signatory operator (and any related person) remains in business.

APPENDIX D

INTERNAL REVENUE CODE

26 § 9712

26 U.S.C. § 9712(b)

(b) **Coverage requirement.**

(1) **In general.** The 1992 UMWA Benefit Plan shall only provide health benefits coverage to any eligible beneficiary who is not eligible for benefits under the Combined Fund and shall not provide such coverage to any other individual.

(2) **Eligible beneficiary**. For purposes of this section, the term "eligible beneficiary" means an individual who–

(A) but for the enactment of this chapter, would be eligible to receive benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, based upon age and service earned as of February 1, 1993; or

(B) with respect to whom coverage is required to be provided under section 9711, but who does not receive such coverage from the applicable last signatory operator or any related person, and any individual who is eligible for benefits by reason of a relationship to an individual described in subparagraph (A) or (B). In no event shall the 1992 UMWA Benefit Plan provide health benefits coverage to any

eligible beneficiary who is a coal industry retiree who retired from the coal industry after September 30, 1994, or any beneficiary of such individual.